

AG Contract No. KR03-1301TRN
ADOT ECS File No : JPA 03-059
Project: TEA-YUM-0(006)
TRACS No. SL 509-01R & 03D
Section: Historic Hotel Del Sol
BUDGET SOURCE ITEM # 75305

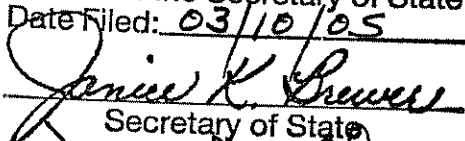
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF YUMA

THIS AGREEMENT is entered into this date March 10th, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CITY OF YUMA, acting by and through its MAYOR and CITY COUNCIL (the "City")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.
4. Such project lies within the boundary of the City and has been selected by the City; the scoping of the project has been completed; and the hotel will be appraised, purchased and designed for rehabilitation contract(s) by the City and submitted to the Federal Highway Administration (FHWA) for its approval. City shall fund rehabilitation of the hotel
5. The acquisition of federal funds to be expended is authorized for the use and benefit of the City by reason of federal law and regulations, under which funds are for the project, is the interest of the State
6. The City, in order to obtain federal funds for the appraisal, purchase & design of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the State and FHWA

NO. 27414
Filed with the Secretary of State
Date Filed: 03/10/05

Secretary of State

By: 

7. The work embraced in this Agreement is as follows: Appraise and acquire the Historic Hotel del Sol, prepare and provide design plans for the building and administer the rehabilitation contract(s), hereinafter referred to as the "Project".

The estimated Project costs are as follows:

TRACS No. SL509 01R & 03D	Total Cost	Federal Funds	City Funds
Building Purchase	\$400,000.00	\$400,000.00	\$ 0.00
Appraisal	\$ 9,500.00	\$ 9,500.00	\$ 0.00
Design (Partial)	\$120,223.00	\$ 90,000.00	\$30,223.00*
Environmental	\$ 30,000.00	\$ 0.00	\$30,000.00
Condition of Title	\$ 500.00	\$ 500.00	\$ 0.00
Total Estimated Cost of the Project	<u>\$560,223.00</u>	<u>\$500,000.00</u>	<u>\$60,223.00</u>
*5.7% local match			

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The City will:

a. Provide and prepare scoping, design plans, and environmental determination specifications required for construction bidding and construction of the Project.

b. Using Arizona Procurement Procedures with the consent of the FHWA, State, and in compliance with the National Environmental Program Act (NEPA) process, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications.

c. Provide personnel to administer and supervise construction.

d. Acquire the necessary right-of-way required for Project construction and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area and hereby certifies that all obstructions and encroachments have been or will be removed prior to the state of construction.

e. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's scope of work, such additional costs shall require prior approval of the State. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by federal funding or not.

f. Invoice the State for progress payments for the direct costs of acquisition and design plans for the building rehabilitation not to exceed the estimated cost of \$560,223.00, after the appraisal, design plans and the acquisition of the Hotel de Sol.

g. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

h. Upon completion of construction, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance of all the Project improvements. This Agreement may be assumed by another entity under the same stipulations.

2. The State will:

a. Agree to be the City's authorized agent for the acquisition of federal funds and submit a program containing the aforementioned Project to FHWA with the recommendation for approval of funds for the acquisition of the Hotel and design plans for the building rehabilitation.

b. Approve the Project if such project funds are available by the FHWA. The State and FHWA hereby designate the City to self-administer the Project.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the authorized federal funds available for the appraisal, acquisition and design.

d. Make progress payments to the City for the direct actual cost, for the acquisition of the Hotel and design plans for the façade rehabilitation within thirty-days (30) of receipt and approval of an invoice from the City

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, litigation expenses or attorneys' fees.

2. The cost of the work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511

5. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which, may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City Administrator
City of Yuma
One City Plaza
P.O. Box 13014
Yuma, AZ 85366-3014

10. In accordance with Arizona revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF YUMA

By Mark S. Watson
MARK S. WATSON
City Administrator

STATE OF ARIZONA
Department of Transportation

By Susan Tellez
SUSAN TELLEZ
Contract Administrator

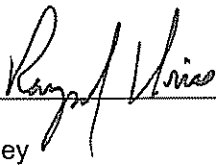
ATTEST:

By Brigitte M. Kuiper
BRIGITTA M. KUIPER
City Clerk

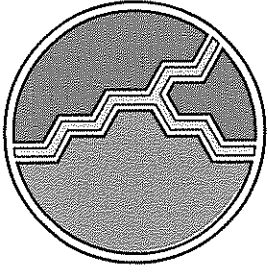
APPROVAL OF THE CITY OF YUMA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 17 day of February, 2005.



City Attorney



City of YUMA

**Office of the
City Clerk**

One City Plaza
P O Box 13012
Yuma, Arizona 85366-3012
(928) 373-5035
FAX (928) 373-5036
TTY (928) 373-5149

CERTIFICATION

I, Brigitta M. Kuiper, do hereby certify that I am the duly appointed City Clerk of the City of Yuma, Arizona, and that the attached Resolution, R2005-08, is a true and correct copy of the resolution on file in the Office of the City Clerk.

Brigitta M. Kuiper, City Clerk

2/23/05

Date

RESOLUTION NO. R2005-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA,
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF YUMA AND THE STATE OF ARIZONA, RELATED TO FEDERAL
FUNDING FOR THE ACQUISITION AND REHABILITATION OF THE HISTORIC
HOTEL DEL SOL**

WHEREAS, the Yuma Metropolitan Planning Organization has identified the site of the historic Hotel Del Sol as the most conducive location for a multi-modal transportation center (facility) within the Yuma metropolitan area; and,

WHEREAS, the City of Yuma (City) desires to acquire, rehabilitate and promote the historic Hotel Del Sol as a multi-modal facility; and,

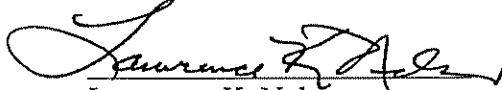
WHEREAS, the State of Arizona (State) has agreed to provide federal funding for the project, through a transportation enhancement grant; and

WHEREAS, the State and the City wish to enter into an Intergovernmental Agreement, allocating federal funds to the City, for acquisition and rehabilitation design activities related to the historic Hotel Del Sol.

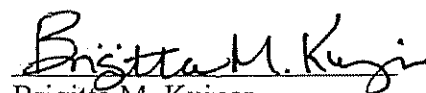
NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, to provide federal funding for acquisition and rehabilitation of the historic Hotel Del Sol.

Passed and adopted this 16th day of February, 2005.

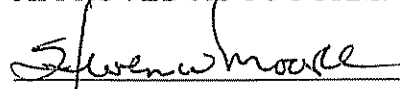
APPROVED:

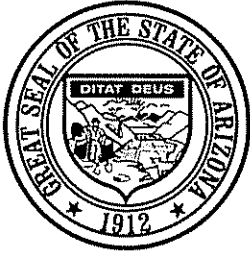

Lawrence K. Nelson
Mayor

ATTESTED:


Brigitta M. Kuiper
City Clerk

APPROVED AS TO FORM:


Steven W. Moore
City Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1301TRN (**JPA 03-059**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED March 3rd, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

JTM:dgr
Attachment
893911